IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.1942 OF 2006

Harish Gobindram Bulchandani & Ors. ..Petitioners

Vs.

Union of India & Ors. ..Respondents

Mr.S.N.Kartawala i/b Vivek Sharma for the petitioners

Mrs.S.D.Shinde, A.P.P. for the state

Mr.R.F.Lambay for respondent nos.2 and 3

Mr.M.Sahu, Addl.P.P. for Union of India

**CORAM : J.N.PATEL &**
**SMT.ROSHAN S.DALVI, JJ.**

**DATED : 16TH OCTOBER, 2006**

P.C.:

1. Heard.

2. The petitioners are aggrieved with the fact that before taking recourse to the procedure, the revenue has recovered a sum of Rs.4.0 lacs illegally from the petitioner no.2 and, therefore, it calls for direction of this court to the revenue to refund the amount so recovered and appropriate

action against respondent nos.2 and direct respondent no.3 to initiate inquiry and appropriate action against its officials and for compensation.

3. In their affidavit in reply, respondent no.2 has set out the facts and circumstances under which the said amount came to be deposited by the petitioners and it is submitted that in so far as the amount due and payable is concerned, the same will be determined after hearing the parties for which show cause notice will be issued to the petitioners after considering the liability of the petitioners in the matter for which co-operation of the petitioners is required for the purpose of completion of investigation. Therefore, it is sought that the petitioners may be directed to appear before the investigating officer for a period of 5 working days and submit all the relevant documents and records so that the investigation can be completed and if on completion of the investigation, it is found that the petitioners have not paid proper duty then the authorities would take steps to recover the same.

4. In so far as grievance of the petitioners that the sum of Rs.4 lacs have been recovered from him through coercion and under threat of taking the petitioners in custody, we do not want to express any opinion on it but it appears that the matter relating to evasion of excise duty is under investigation by the revenue and the petitioners are expected to cooperate with them in the matter of investigation otherwise the revenue would be left with no choice but to take coercive action.

5. The learned counsel for the petitioners submits that the petitioners have always shown their willingness to cooperate in the investigation of the case and state that the petitioners alongwith their authorised representatives would attend the office of the revenue for a period of 5 days and thereafter as and when required and make available all the relevant documents required for the purpose of investigation.

6. Needless to state that incase it is found

that the sum of Rs.4 lacs, which according to the petitioners is illegally recovered whereas it is the case of the revenue that it was paid towards the duty, is found to have been recovered without any justification as to liability to pay excise duty, petitioners would be entitled for refund with statutory interest otherwise it can be appropriated against the dues which on investigation are found to be recoverable from the petitioners.

7. The learned counsel for the petitioners submits that the petitioners would start attending the office of the revenue personally or through authorised representative unless their presence is not required by the revenue alongwith relevant documents and documents which are sought for by the revenue from 23.10.2006 onwards between 11 a.m. - 5 p.m.

8. The learned counsel for the revenue assures the court that the petitioners would not be put to undue harassment if they co-operate with the department. Petition stands disposed of accordingly.

. An authenticated copy of the order be furnished to the counsel for the parties.

**( SHRI J.N.PATEL, J )**

**( SMT.ROSHAN DALVI, J )**